IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6338 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI NATHALAL PATEL - Petitioner(s)
Versus
STATE OF GUJARAT THR; REVENUE SECRETARY & 2 - Respondent(s)

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Appearance :
MR UMANG K CHOKSI for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date :20 /06 /2006

CAV JUDGMENT

Leave to amend date in prayer Clause 8(B) i.e. dated 9/9/2002 instead of 27/10/2003 (As per Annexure “E” to the memo of the petition) was granted, on 13/04/2006.

This petition has been preferred against the order dated 9th September,2002; order dated 29th December,2005 and order dated 27th January,2006 passed by respondent no.3 - Deputy Collector, Stamp Duty Valuation, Gandhinagar (Annexure "E", “L” and “M” respectively to the memo of the petition) as well as against the order dated 29th October,2004 passed by respondent no.2 – The Chief Controlling Revenue Authority, Gandhinagar (Annexure “I” to the memo of the petition).

2. Learned advocate for the petitioner mainly submitted that the impugned orders passed by respondent no.3 - Deputy Collector, Stamp Duty Valuation, Gandhinagar, (Annexure "E", “L” and “M” to the memo of petition) are an ex-parte order, whereby excessively exorbitant market value of the land in question has been fixed. Learned advocate for the petitioner submitted that no opportunity of being heard was given to the petitioner by Deputy Collector, Stamp Duty Valuation, Gandhinagar before passing the impugned orders and, therefore, the impugned orders at Annexure "E", “L” and “M” deserve to be quashed and set aside. The valuation of the land is dehors the provisions of The Bombay Stamp Act,1958 (hereinafter referred to as “the Act,1958”) and the Bombay Stamp (Determination of Market Value of Property)

Rules,1984 (hereinafter referred to as “the Rules,1984).

3. Learned advocate for the petitioner has also submitted that while passing the impugned orders by Deputy Collector, Stamp Duty Valuation, Gandhinagar has relied upon certain documents, which were never supplied to the petitioner. Respondent authority has relied upon “Prevailing Jantri”, which reflects the market price of the land in question. As per “Prevailing Jantri”, the respondent authority has fixed the market value of the land in question at Rs.25,36,000/-. In fact, the order dated 9th September,2002 at Annexure "E" passed under section 32A of the Act,1985 is absolutely a non-speaking order. A copy of this order was also not supplied to the petitioner and, therefore, the order dated 9th September,2002 at Annexure “E” deserves to be quashed and set aside.

4. Learned advocate for the petitioner submitted that the Deputy Collector, Stamp Duty Valuation, Gandhinagar has not followed the procedure for determining the market value of the land in question as per Rule 4 read with Rule 8 of the Bombay Stamp (Determination of Market Value of Property) Rules,1984 (hereinafter referred to as “the Rules,1984) and, therefore, the order passed by Deputy Collector, Stamp

Duty Valuation, Gandhinagar at Annexure “E”, which is an ex-parte order and violative of provisions of the Act,1958 read with the Rules,1984 deserve to be quashed and set aside.

5. Learned Assistant Government Pleader Mr.K.L.Pandya for the respondents submitted that the orders passed by the Deputy Collector, Stamp Duty Valuation, Gandhinagar is true, correct and in consonance with the facts of the present case. The market value of the land in question arrived at by the respondent authority is true and correct. The petitioner has not preferred an Appeal within stipulated time, and, therefore, the respondent authority has passed the order dated 27th January,2006. The order dated 9th September,2002 passed by Deputy Collector, Stamp Duty Valuation, Gandhinagar (Annexure "E" to the memo of the petition) clearly reflects the fact that as per the “prevailing Jantri”, the market price of the land in question is fixed at Rs.25,36,000/- and the market value arrived at by the Deputy Collector, Stamp Duty Valuation, Gandhinagar under section 32A of the Act,1958 is true and correct.

6. Having heard the learned counsel for both the

sides and looking to the facts and circumstances of the case, in my opinion, the impugned order order dated 9th September,2002; order dated 29th December,2005 and order dated 27th January,2006 passed by respondent no.3 - Deputy Collector, Stamp Duty Valuation, Gandhinagar (Annexure "E", “L” and “M” respectively to the memo of the petition) as well as against the order dated 29th October,2004 passed by respondent no.2 – The Chief Controlling Revenue Authority, Gandhinagar (Annexure “I” to the memo of the petition) deserve to be quashed and set aside, for the following facts and reasons:-

(i) The order dated 9th September,2002 passed by Deputy Collector, Stamp Duty Valuation, Gandhinagar is a non-speaking order. No reasons have been assigned for fixing the market value of the land in question at Rs.25,36,000/-. The only reason, which is given by the Deputy Collector, Stamp Duty Valuation, Gandhinagar, while passing the impugned order at Annexure "E" is that as per “Prevailing Jantri”, the price of the disputed property is referred at Rs.25,36,000/-. It appears that it is a sole basis for fixing the market value. No other calculation or basis has been given in the said order. Thus, the order at Annexure "E" is a non-speaking order. It is the duty of the respondent authority to justify

such a higher market value because it is their say that the market value of the land in question is at Rs.25,36,000/- instead of Rs.1,00,000/-.

(ii) The document - “Jantri”, referred in the impugned order at Annexure “E”, which reflects the price at Rs.25,36,000/- has not been supplied to the petitioner and, therefore also, the impugned order deserves to be quashed and set aside. This document has been relied upon by the Deputy Collector and, therefore, copy thereof ought to have been supplied to the petitioner. It is the duty of respondent authority, that whenever they are relying upon any document, a copy thereof ought to be supplied to the petitioner.

(iii) No opportunity of being heard has been given to the petitioner. The figure of market value of the land in question arrived at Rs.25,36,000/-, has no basis at all. The criteria for determination of the market value have already been fixed under Rule 8 of the Rules,1984. It is not reflected from the impugned order at Annexure "E" that the price has been fixed after considering the principles, enshrined in Rule 8 of the Rules,1984. It appears that a lumpsum figure has been fixed as market value of the land in question at Rs.25,36,000/- and,

therefore, the impugned order dated 9th September,2002 at Annexure "E" is an arbitrary order. Looking to the nature of the order, which is at Annexure "E" to the memo of the petition, it is apparent that only 'one line reasoning' has been referred to the effect that “there is no reply of the show cause notice by the petitioner and hence, as per “prevailing Jantri”, market value of the property in question is fixed at Rs.25,36,000/-”. By no stretch of imagination, this can be said to be a reasoned order. Burden of proof is upon respondent. “Burden of proof lies upon him who affirms; and not upon him, who denies”. It is the say of respondent authority that deed of conveyance is revealing lesser market value. It is the respondents, who are fixing higher market value. Therefore respondent has to justify their fixation of higher market value. Respondents cannot throw their burden, upon petitioner. Such type of reasoning tantamounts to arbitrariness. Arbitrariness and equality are sworn enemies of each other. When arbitrariness is present, equality is always absent and where, equality is present, arbitrariness is always absent.

(iv) It is also contended by the learned advocate for the petitioner that the respondent has not applied his mind and in cyclostyled format, the impugned order has

been passed, wherein some gaps have been filled in and one and two sentences have been added. Such type of orders are violative of principle of natural justice. This Court has time and again delivered judgments and has quashed and set aside such type of order passed by the respondent. Learned advocate for the petitioner has also relied upon the judgment dated 11th August,2003 delivered by this Court in **Special Civil Application No.4434 of 2003** and also a decision dated 3rd April,2002 rendered by this Court in the case of **Pradhyumanbhai Mohanlal Patel V/s. State of Gujarat** reported in **2003(1) GLR 454**. Learned advocate for the petitioner has also relied upon the judgment dated 22nd February,2005 delivered by Division Bench of this Court in **Letters Patent Appeal No.109 of 2005 in Special Civil Application No.16787 of 2004** as well as order dated 10th October,2005 passed by this Court in **Special Civil Application No.13729 of 2005 along with other group of matters** and judgement dated 5th December,2001 passed by this Court **(Coram:Hon'ble Mr.Justice R.R.Tripathi) in Special Civil Application No.654 of 2000 with Special Civil Application No.2794 of 2001** in the case of **Ambuja Metal Industries Pvt.Ltd. V/s. State of Gujarat** and has pointed out that the impugned order (Annexure "E" to the memo of the petition) deserves to be quashed and set aside. On perusal of the impugned

order and comparing it with the facts of the present case, I am also of the opinion that the impugned order is a non-speaking order since no reasons have been assigned for fixing the market value of the land in question at Rs.25,36,000/-. The order (at Annexure "E" to the memo of the petition) is a cyclostyled order, in which blanks have been filled in. No reasons have been assigned for filling in those blanks. No opportunity of being heard has been given to the petitioner by the Deputy Collector, Stamp Duty Valuation, Gandhinagar nor even the document relied upon by the Deputy Collector, Stamp Duty Valuation, Gandhinagar have been supplied to the petitioner.

(v) As per the Bombay Stamp (Determination of Market Value of property) Rules,1984, it is the duty of the Collector to provide the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him. Rule 4 of the Rules,1984 reads as under:-

> **“4. Procedure to be followed by the Collector for determining the true market value of the property which is the subject matter of the instrument:-**
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> “4(i) on receipt of the instrument under sub-section (3) of Section 31 or sub-

section (1) of section 31-A, the Collector of the District, where the thinks fit to do so, may for the purpose of his inquiry:-

(a) call for any information or record having bearing, on the question before him from any public office, officer or authority under the Central Government, State Government or any local authority;

(b) examine and record statement from any member of the public officer or the authority under the Central Government or State Government or any local authority, and

(c) inspect or empower any officer under him to inspect the property after due notice to the parties concerned.

(2) After examining the said information, records and evidence, if any, before him Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him, to every person to whom according to the provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing along with all the evidence in support of such representation.

(3) The Collector of the District shall after considering the representation, if any, received by him under sub-rule (2) pass an order determining the true market value and the proper payable on the instrument."

(emphasis supplied)

In view of the aforesaid provision, the basis

for arriving at the market value ought to have been pointed out to the petitioner. Similarly, it is also the duty of the Collector to pass an order determining the true market value and the proper duty payable on the instrument. Looking to the facts of the present case, it is apparent that no such basis has been provided for arriving at the market value nor there is any reflection of the basis of the market value fixed by the Collector in the impugned order dated 9th September,2002. Reasons always reflect the application of mind of the lower authority. “Reasons” is the soul of the order. If the order is without reasons, the appellate authority cannot appreciate the order passed by the lower authority but looking to the basic vices in the order passed by the respondent No.3 – Deputy Collector, Stamp Duty Valuation, Gandhinagar, the matter is being remanded to the Deputy Collector for his fresh decision.

(vi) The fixation of the market value is a complex phenomenon. When the party has purchased the land in question at Rs.1,00,000/-, the price, which is reflected in the conveyance deed, is not accepted by the respondent authority and the respondent authority has fixed the higher market value for the land in question, it is for the respondent authority to justify the higher market

value. Reasons ought to have been assigned for arriving at higher market value. Any lumpsum figure whichever comes in the mind of respondent No.3 cannot be labelled as true and correct market value, unless reasons are assigned for arriving at such value. Without reasons, if the market value is fixed for the land in question, it leads to arbitrariness. The arbitrary usage of powers is always giving birth to discrimination and whenever there is discrimination, there always is a breach of right of equality. Without assigning any reasons, if any figure is to be fixed, it can be few Lacs more or it can be few Lacs less. The petitioner cannot be thrown at the speculation of the respondent authority. Several reported as well as unreported judgments have been given by this Court, whereby, such type of cyclostyled order has been quashed but it appears that the respondent authority is not paying any attention to such type of judgments and is repeatedly committing similar type of errors and, therefore, citizens have to approach this Court again and again. Multifariousness of petitions could have been avoided. In view of the aforesaid judgments cited by the petitioner, this Court has directed the Deputy Collector, Stamp Duty Valuation, to pass a speaking order, within time limit specified under the Act,1956. A cyclostyled order, with some gaps filled in and two sentences are

added, reflects clear non-application of mind. On the contrary, it is the duty vested in the respondent No.3, to justify their say, for higher market value, for the land in question.

7. As a cumulative effect of the aforesaid facts and circumstances of the case and looking to the judicial pronouncements referred to hereinabove, the order dated order dated 9th September,2002; order dated 29th December,2005 and order dated 27th January,2006 passed by respondent no.3 - Deputy Collector, Stamp Duty Valuation, Gandhinagar (Annexure "E", “L” and “M” respectively to the memo of the petition) as well as against the order dated 29th October,2004 passed by respondent no.2 – The Chief Controlling Revenue Authority, Gandhinagar (Annexure “I” to the memo of the petition) are hereby quashed and set aside. The matter is remanded to respondent No.3- Deputy Collector, Stamp Duty Valuation, Gandhinagar for taking a fresh decision and for passing a speaking order, as per the Act,1958 read with the Rules,1984 and after giving an opportunity of being heard to the petitioner. The parties will be at liberty to make their submissions before respondent No.3- Deputy Collector, Stamp Duty Valuation, Gandhinagar, which may be dealt with by him while passing the order in

accordance with law. Rule made absolute to the aforesaid extent with no order as to costs.

(D.N.PATEL,J)

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